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**Datasheet for the decision
of 21 May 2026**

Case Number: T 1099/24 - 3.2.07

Application Number: 18732897.6

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B65B19/32, B65B19/22,
B65B57/12, B65B57/14, B65B57/16

Language of the proceedings: EN

Title of invention:

A METHOD FOR CONTROLLING A PACKING MACHINE MANUFACTURING
PACKETS OF SMOKING ARTICLES, EACH CONTAINING TWO DISTINCT
GROUPS OF SMOKING ARTICLES

Patent Proprietor:

G.D Società per Azioni

Opponent:

Focke & Co. (GmbH & Co. KG)

Headword:

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1099/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 21 May 2026

Appellant:

(Opponent)

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted/electronically
transmitted on 3 July 2024 rejecting the
opposition filed against European patent No.
3630620 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman

G. Patton

Members:

S. Watson

S. Ruhwinkel

Summary of Facts and Submissions

- I. An appeal was filed by the opponent against the decision of the opposition division rejecting the opposition against European patent No. 3 630 620.
- II. The opposition was directed against the patent as a whole and based on the grounds for opposition according to Article 100(a) (lack of inventive step) and 100(c) EPC (unallowable amendment). The opposition division found that neither ground prejudiced the maintenance of the patent as granted.
- III. The following documents which formed part of the decision under appeal are referred to in this decision:
- D1: EP 1 020 357 A1
D4: WO 2017/064659 A1.
- IV. In preparation for the oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA dated 24 November 2025. The preliminary opinion of the board was that the ground for opposition under Article 100(a) EPC appeared to prejudice maintenance of the patent as granted so that the appeal could be allowed.
- Neither party responded in writing to the preliminary opinion.
- V. Oral proceedings before the board took place on 21 May 2026. At the conclusion of the oral proceedings the decision was announced.

Further details of the oral proceedings can be found in the minutes.

VI. The final requests of the parties were as follows.

The opponent ("appellant") requested

- that the decision under appeal be set aside, and
- that the patent be revoked.

The patent proprietor ("respondent") requested

- that the appeal be dismissed, or if the decision under appeal is set aside,
- that the patent be maintained in amended form on the basis of one of the sets of claims of auxiliary requests 1 or 2, filed with the reply to the appeal, whereby auxiliary requests 1 and 2 were first submitted during opposition proceedings on 11 January 2024.

VII. Independent claim 1 of the patent as granted (main request) reads as follows (feature labelling as used by the appellant in its notice of opposition):

- M0101** A method for controlling a packing machine (8) manufacturing
- M0102** packets (1) of smoking articles, each containing two distinct inner wraps (3) each realized by folding a wrapper (5) around a group (4) of smoking articles;
- M0103** the packing machine (8) comprises:
- M0103.1** a forming unit (9), where the groups (4) of smoking articles are formed in succession and which comprises a hopper (30), which is provided with at least four output mouths (31), each used to extract a group (4) of smoking articles by means of a corresponding

- extraction device (34); and
- M0103.2** a first wrapping unit (10), wherein each wrapper (5) is folded around each group (4) of smoking articles so as to form a corresponding inner wrap(3);
- M0103.3** a coupling unit (11), wherein the inner wraps (3) are coupled so as to form the content of the packets (1) of smoking articles;
- M0103.4** a second wrapping unit (12), wherein a blank (6) is folded around each pair of inner wraps (3) so as to form an outer container (2); and
- M0103.5** a plurality of wrapping drums (13, 20, 26) which are part of the two wrapping units (10, 12) and each of which has a plurality of wrapping heads (15, 22, 28), which are suitable to receive the groups (4) of smoking articles together with corresponding wrapping materials (5, 6, 7);
- M0103.6** wherein each output mouth (31) has an associated output mouth (31), so that two output mouths (31) are associated with each another when the two output mouths (31) are used to extract two corresponding groups (4) of smoking articles which will be coupled to one another so as to be part of the same packet (1) of smoking articles;
- M0104** the control method comprises the steps of:
- M0104.1** detecting the correct operation of each output mouth (31) of the hopper (30), so as to identify a possibly faulty output mouth (31);
- M0104.2** using, for the formation of the groups (4) of smoking articles and in the absence of faulty output mouths (31), all the output mouths (31), always extracting from each output mouth (31) a corresponding group (4) of smoking articles; and

- M0104.3** using, to manufacture the packets (1) of smoking articles and in the absence of faulty output mouths (31), all the wrapping heads (15, 22, 28), always supplying all the wrapping heads (15, 22, 28) with the corresponding wrapping materials (5, 6, 7);
- M0105** the control method is characterised in that it comprises the further steps of:
- M0105.1** avoiding using, for the formation of the groups (4) of smoking articles and in the presence of a faulty output mouth (31), the faulty output mouth (31) as well as the output mouth (31) associated with the faulty output mouth (31), thus avoiding extracting the corresponding groups (4) of smoking articles from the two output mouths(31);
- M0105.2** avoiding using, to manufacture the packets (1) of smoking articles and in the presence of a faulty output mouth (31), the wrapping heads (15, 22, 28) that are supposed to receive the groups (4) of smoking articles from the faulty output mouth (31) and from the output mouth(31) associated therewith; and
- M0105.3** avoiding supplying the corresponding wrapping materials (5, 6, 7) to the wrapping heads (15,22, 28) that are supposed to receive the groups(4) of smoking articles from the faulty output mouth (31) and from the output mouth (31) associated therewith.

VIII. Independent claim 1 of auxiliary request 1 corresponds to claim 1 of the main request with the following amendments to feature M0102:

- M0102** "packets (1) of smoking articles, each containing two distinct inner wraps (3) each

realized by folding a rectangular-shaped wrapper (5) around a group (4) of cylindrical smoking articles;".

- IX. Independent claim 1 of auxiliary request 2 corresponds to claim 1 of the main request with the addition of "rectangular-shaped" before "wrapper (5)" in feature M0102 and the replacement of the term "smoking articles" with the term "cigarettes" throughout the claim.
- X. The arguments of the parties relevant for the decision are dealt with in detail below.

Reasons for the Decision

1. *Main request - claim 1 - Article 100(a) EPC with Article 56 EPC*

In the decision under appeal, the opposition division found that the subject-matter of claim 1 of the main request was not obvious in view of document D4 with document D1 (see decision under appeal, 2.3.1.9 to 2.3.1.12).

2. Distinguishing features with respect to D4

- 2.1 The opposition division found that the distinguishing features with respect to the disclosure of D4 were M0103.1, M0103.6, M0104 and M0105 (see decision under appeal, 2.3.1.9 to 2.3.1.11), as argued by the respondent.

The appellant contested the opposition division's findings and argued that feature M0104 was implicitly disclosed in D4.

2.2 The appellant argued that it was implicit when using the machine disclosed in D4, that the responsible operator would monitor the correct functioning of the machine in operation and would only allow the machine to continue to function if all components were functioning correctly. This meant that the operator would operate the packaging machine once the correct functioning of the output mouths had been established.

Further, as D4 disclosed a known forming unit 7, any forming unit from the prior art at the priority date of D4 was implicitly disclosed, in particular a hopper was disclosed as this was mentioned in relation to the prior art considered in D4.

2.3 The board notes, as argued by the respondent, that it is established case law that an implicit disclosure must be the clear and unambiguous consequence of the explicit disclosure. It must be immediately apparent to the skilled person that nothing other than the implied feature is possible (see Case Law of the Boards of Appeal, 11th edition 2025, (CLB) I.C.4.3).

There is no explicit disclosure in D4 relating to a hopper or to output mouths as only a forming unit 7 is mentioned, without any further details being given.

Additionally, even if the skilled person might be considered to be aware of machine monitoring in general, there is no disclosure in D4 that any monitoring takes place or that the correct operation of each output mouth of a hopper is detected.

Any implicit disclosure in D4 of a hopper must be an inevitable consequence of any known forming machine.

Even if a hopper was considered by the skilled person to be an obvious component for holding the cigarettes prior to extraction in groups, this is not an inevitable consequence as other types of forming unit are conceivable.

It is not an inevitable consequence of the disclosure of D4 that the correct operation of undisclosed output mouths of an undisclosed hopper are detected and the machine is then run only in the absence of any faulty mouths. There are alternative methods for outputting cigarettes, not necessarily using a hopper; all parts of a machine are not inevitably monitored; and even in the event of a fault, the operator could have instructions to still operate the machine.

- 2.4 The board therefore concludes that the opposition division was correct in its finding that the distinguishing features with respect to the disclosure of D4 were M0103.1, M0103.6 and the groups of features M0104 and M0105.

3. Objective technical problem

- 3.1 In the contested patent the objective technical problem is given as increasing the productivity of the packaging machine without, at the same time, increasing the quantity of cigarettes and wrapping material which is discarded (see contested patent, paragraph [0011]).
- 3.2 The appellant argued that a partial problem approach should be used (as found by the opposition division in the decision under appeal, 2.3.1.7). The respondent argued that the objective technical problem set out in the contested patent should be used.

3.3 The board concludes that the subject-matter of claim 1 of the main request is not inventive (see point 4. of this decision below), even if the respondent's objective technical problem is used. The board therefore regards the objective technical problem to be solved as to increase the productivity of the packaging machine whilst preventing the formation of incomplete packs and wasted wrapping material.

4. Obviousness

4.1 *Combination of D4 with D1*

4.1.1 The opposition division reasoned that the skilled person would not be prompted to consider D1 as it dealt only with standard packs, not twin packs as in D4, and only generally hinted at suppressing packaging material in general but not the suppression of feeding of inner wraps as these were not found in D1 (see decision under appeal, 2.3.1.11).

4.1.2 The board however agrees with the appellant that the skilled person considers the same and neighbouring fields when looking for solutions to a technical problem (see CLB, I.D.8.2). They would not confine their search to only methods for forming "twin packs" but would certainly consider methods for controlling packaging machines manufacturing packets of smoking articles in general, such as disclosed in document D1.

In document D1, in paragraphs [0033] and [0037], a clear teaching is given that incomplete packets of cigarettes should be avoided by stopping feeding of cigarettes and packing material from all sources which combine to make a packet. The skilled person therefore would be aware of document D4 as starting document and

would be prompted to combine the teaching of the two documents due to the clear teaching of D1.

4.2 *Features M0103.1 and M0103.6*

- 4.2.1 At the oral proceedings before the board, the respondent argued that a combination of documents D4 and D1 would not lead to feature M0103.1 as this feature required each outlet mouth to extract a group of smoking articles and a group of smoking articles could not be only a layer, as disclosed in D1.

In the board's view, the combination of D4 and D1 does show feature M0103.1 as document D1 discloses a hopper in figure 1 with at least four output mouths from which groups of cigarettes are extracted (D1, paragraph [0020]). The skilled person understands when combining the teaching of documents D4 and D1 that the layers (6a, 6b, 6c) in D1, figure 1 (see for instance also figure 3), combine to make a packet, in the same way that the twin packs in D4 combine to make a packet.

- 4.2.2 At the oral proceedings before the board, the respondent also argued that the skilled person considering document D1 would turn to the embodiment of figure 7, rather than that of figure 1, because figure 7 shows groups of cigarettes being extracted from output mouths in one go, not being built up in layers. However the embodiment of figure 7 only shows two output mouths, so feature M0103.1 was not disclosed in D1.

The board notes that the skilled person is not limited to choosing only one embodiment of a document when assessing inventive step. The passages discussing the importance of preventing the formation of incomplete

packs of cigarettes and suppressing packaging material relate to the embodiment shown in figure 1 (paragraphs [0033] and [0037] of D1). The skilled person would therefore consider this embodiment when seeking to solve the objective technical problem as these paragraphs provide the pointer to the solution.

- 4.2.3 The respondent also argued that feature M0103.6 was not present in the combination of D4 and D1 as nine output mouths could not lead to pairs of mouths associated with one another which extract corresponding groups of smoking articles which form the same packet. According to the respondent, as the three associated mouths in D1 each extracted a layer of a packet, this could not lead to feature M0103.6.

In the board's view, as the appellant argued, there is no requirement in feature M0103.6 that the same two mouths are permanently associated with one another, a cyclical operation is also possible. The claim is not limited to an even number of output mouths as feature M0103.1 only requires "at least four output mouths".

4.3 *Features M0104 and M0105*

- 4.3.1 The opposition division reasoned in the decision under appeal that as D1 did not specifically mention the suppression of feeding inner wraps, feature M0105 was not disclosed in D1. An inner wrap is understood here to be a group of cigarettes enclosed in a wrapper which will form one twin of a twin pack, as set out in feature M0103.2.
- 4.3.2 However, feature M0105 does not require inner wrap feeding to be suppressed but refers rather to the smoking articles (M0105.2) and the wrapping materials

at the wrapping heads (M0105.3), i.e. the wrappers (M0103.2) and outer container blanks (M0103.4).

In D1 the smoking articles are clearly suppressed at the associated mouth(s) of the same packet (D1, paragraph [0033]) and any associated packing material is also cut off (D1, paragraph [0037]).

D1 thus discloses the principle behind feature M0105, that if a faulty mouth is detected, this mouth together with any associated output mouths for the same packet are not used, and packing material is not supplied. The skilled person would use this feature analogously in the method of D4. Contrary to the arguments of the appellant, this combination is not made *ex post facto* as D1 discloses that incomplete packets are to be avoided by shutting down all associated mouths when a fault is detected and also packing material must be shut off, clearly resulting in less wastage.

The board also agrees with the appellant that it is implicit that as feature M0105 is present in D1 then M0104 is also present, because when no fault is detected, all outlets will be in use.

The board therefore considers that features M0104 and M0105 are present in the combination of D4 and D1.

- 4.3.3 The skilled person, starting from the method of D4 and in view of the teaching of D1 would thus obviously arrive at the subject-matter of claim 1 of the main request which is not inventive (Article 56 EPC).
5. The decision under appeal is therefore to be set aside as the ground for opposition according to Article

100(a) EPC prejudices the maintenance of the patent as granted.

6. *Auxiliary requests 1 and 2*

- 6.1 Both auxiliary requests were filed in response to the ground for opposition under Article 100(c) EPC.

Document D4 discloses both rectangular-shaped wrappers and cylindrical smoking articles which are cigarettes (see D4, page 3, lines 13 to 25). Therefore the above inventive step objection has not been overcome by either request. This was not contested by the respondent.

7. In the absence of any allowable request the patent must be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated